

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Southern California Edison
Company (U 338-E) for Approval of Economic
Development Rates.

Application 04-04-008
(Filed April 5, 2004)
(Rehearing Granted May 25, 2006)

Application of Pacific Gas and Electric
Company (U 39 E) to Modify the Experimental
Economic Development Rate (Schedule ED).

Application 04-06-018
(Filed June 14, 2004)
(Rehearing Granted May 25, 2006)

Application of SOUTHERN CALIFORNIA
GAS COMPANY (U 904 G) for Approval of a
Long-Term Gas Transportation Agreement with
Guardian Industries Corp.

Application 05-10-010
(Filed October 7, 2005)
(Discount Issues)

**REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY
IN RESPONSE TO THE JUNE 22, 2006 AND JUNE 26, 2006 ADMINISTRATIVE
LAW JUDGE RULINGS**

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JUDGE RULINGS**

In response to the June 22, 2006 “Administrative Law Judge’s Ruling Regarding Order Granting Limited Rehearing of Decision (D.) 05-09-018 Regarding the Floor Price for EDR” (the EDR ALJ Ruling) and the June 26, 2006 “Administrative Law Judge’s Ruling Requesting Comments” (the Gas ALJ Ruling), Pacific Gas and Electric Company (PG&E) hereby provides these reply comments.

On August 1, 2006, PG&E filed opening comments on the two ALJ Rulings in separate filings.¹ These reply comments address the issues covered by both ALJ Rulings. In addition to the opening comments filed by PG&E, opening comments were also filed by the California Manufacturers and Technology Association (CMTA), the Merced and Modesto Irrigation

¹ Where necessary, PG&E refers herein to its two filings as “PG&E’s Gas Comments” and “PG&E’s EDR Comments.” Initially, PG&E served its Gas Comments only to parties to A.05-10-010. After discovering the omission, on August 15, 2006, and in accordance with the July 25, 2006 “Administrative Law Judge’s Ruling Consolidating Discount Issues for Decision and Establishing New Service List for Filing Reply Comments and Other Documents Concerning Discount Issues,” PG&E served the Gas Comments on parties to A.04-04-008/A.04-06-018. PG&E apologizes for the error and any confusion to the parties that may have resulted from the earlier omission.

Districts (the Irrigation Districts), Southern California Edison Company (Edison), the Southern California Gas Company (SoCalGas) and a coalition of various parties (the Coalition).² (Unless otherwise noted, all citations herein are to the parties' August 1, 2006 opening comments.)

These reply comments are divided into two sections. Section I addresses the issues presented by the Gas ALJ Ruling. Section II addresses the issues raised by the EDR ALJ Ruling. The key points made in these reply comments are set forth below:

- PG&E agrees with the Coalition that the Gas Public Purpose Program Surcharge (G-PPPS) should not be discounted for individual customers, but not for the same reasons put forth by the Coalition.
- PG&E believes that it is appropriate for the Commission to create a new customer class for purposes of setting a lower, incentive G-PPPS rate.
- The utilities should be allowed to withdraw their EDR filings depending on the final outcome of this matter.
- Any changes to the EDR tariffs and ratemaking that result from this proceeding should be made to apply only prospectively.
- The Commission was authorized to discount nonbypassable charges in the manner done by D.05-09-018, however, the Commission should issue certain findings of fact and a conclusion of law conforming this decision with the legal arrangements establishing the Recovery Bonds.
- Ratepayers, not shareholders, are the true beneficiaries of the EDRs.
- Like Edison, PG&E is willing to commit to allocating revenues received under the EDRs first to the nonbypassable components of the rate, and then to the distribution portion of the rate.

Each of these points is addressed more fully herein.

I. ISSUES CONCERNING THE DISCOUNTING OF G-PPPS

This section addresses two issues concerning the G-PPPS. First, this section addresses parties' comments regarding the legal basis precluding the Commission from discounting³ the G-

² The Coalition comprises the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), Aglet Consumer Alliance (Aglet), Consumer Federation of California (CFC), Utility Consumer Action Network (UCAN), National Consumer Law Center (NCLC), the Greenlining Institute (Greenling), Latino Issues Forum (LIF), Disability Rights Advocates (DIRA), the California Citizens for Health Freedom and the Environmental Center of San Luis Obispo (ECOSLO). Each of the parties in the Coalition did not necessarily join in all of the comments filed by the others in the Coalition. For ease of reference herein, such a distinction is not retained and the comments of these various parties are collectively referred to as those of the Coalition.

³ As a point of clarification, the term "discounting" is used in different ways in the different ALJ Rulings and in the parties' various comments on the ALJ Rulings. This has the potential to lead to considerable

PPPS. Second, this section address parties' comments regarding the propriety of establishing a customer class for setting a lower, incentive G-PPPS rate.

A. PG&E Agrees with the Coalition that the G-PPPS Cannot be Discounted for a Single Customer, But Not for the Reasons Stated by the Coalition.

PG&E agrees with the Coalition that the Commission has no authority to approve a single-customer discount of G-PPPS. Despite the similar conclusions reached, however, the Coalition's reasoning is flawed.

As PG&E explained in its Gas Comments, the G-PPPS constitutes a tax. Assembly Bill ("AB") 1002 — the genesis of G-PPPS — was a "tax equity measure." Gas consumed by customers who are exempt from taxation under the United States Constitution or the California Constitution also are exempt from paying G-PPPS. G-PPPS funds are remitted to the California Board of Equalization (BOE) and deposited in the State Treasury. The BOE treats G-PPPS as an excise tax. (PG&E Gas Comments, pp. 3-4.) In short, no party has disputed that AB 1002 was specifically enacted as a tax in order to collect funds from entities that were taking service from interstate pipelines, rather than from the California utilities. As a tax, the CPUC has no authority to approve a single-customer discount of G-PPPS.

The Coalition takes a different tack, arguing that the Commission cannot provide a single-customer discount of G-PPPS because the intent of the legislation was to create a "level playing field." (Coalition, pp. 23-24.) According to the Coalition, the "level playing field" can be achieved only by all end-use customers paying identical surcharge amounts. This reasoning, however, does not withstand scrutiny. The "level playing field" referenced by the Coalition was intended to correct for the fact that end-use customers served directly by interstate pipelines were

confusion. In the context of the Gas ALJ Ruling, PG&E understands the term "discount" to mean a lower rate provided to a single customer as a unique concession. In the context of the EDR ALJ Ruling, PG&E believes the use of the term "discount" is a misnomer. At issue in the EDR ALJ Ruling is whether or not the nonbypassable charges should be included in the floor price below which EDR rates cannot fall. In the underlying EDR proceeding, PG&E warned that the use of the term "discount" could lead to confusion because "discounts" typically carry with them corresponding "costs" or "shortfalls," neither of which is present here. (Ex. 9, p. 3-5, line 26 to p. 3-6, line 33.) Although PG&E adopts herein the conventions of terminology used in the different ALJ Rulings, PG&E urges the Commission and the parties to be sensitive to the different meanings and uses of the term "discounting."

not paying *any* portion of gas public purpose costs prior to the enactment of AB 1002. While it is true that the California Legislature intended that G-PPPS be paid by all end-use natural gas customers (whether served by an interstate or intrastate pipeline), it is also true (as the Coalition concedes) that the Commission has the authority to set *different* rates for *different* customer classes. The Coalition fails to harmonize its argument that the statute mandates that each end-use customer pay an identical surcharge with the undeniable authority of the Commission to set G-PPPS rates by customer class.

Thus, the Commission lacks the authority to approve a single-customer discount for G-PPPS not because the statute mandates that each customer pay the same surcharge amount, but because G-PPPS is a tax enacted by the California Legislature that the Commission has no authority to discount for a single customer. Yet, as PG&E explained in its Gas Comments and as PG&E reiterates in Section I.B. below, the Commission can establish a new G-PPPS customer class and set a lower rate for that class.

B. The Commission has the Authority to Establish a New Customer Class for G-PPPS Purposes and Set a Lower, Incentive G-PPPS Rate.

PG&E explained in its Gas Comments that while the Commission has no authority to discount G-PPPS for a single customer, the Commission is vested with the authority to set G-PPPS rates by customer class. (See Pub. Util. Code § 890(e) (“The Commission shall annually establish a surcharge rate for each class of customer for the service territory of each public utility gas corporation.”).) Most of the parties who filed comments in response to the Gas ALJ Ruling acknowledge this authority. For example, CMTA argues that:

[T]he Commission has discretion under Section 890(e) to determine how to allocate PPP costs among various classes of consumers. The Commission also has discretion to create a class of customers comprised of customers such as Guardian Industries taking service under a long-term service agreement with approved rate discounts. For this class, the Commission could establish a lower surcharge rate that would accommodate most of the rate discount authorized by the Commission. (CMTA, p. 2.)

The CMTA’s comments underscore PG&E’s suggestion that the Commission establish a

new G-PPPS customer class comprising economic development customers and set a lower, incentive rate.

The Coalition — which strenuously objects to single-customer discounts of G-PPPS — acknowledges that the Commission is vested with the discretion to set the G-PPPS rate by “class of customers.” (Coalition, p. 20.)⁴ Thus, nothing in the Coalition’s comments indicates a statutory bar to the establishment of a separate customer class with narrowly-defined criteria that receives a lower, incentive G-PPPS rate.

Finally, SoCalGas’s comments suggest that a discount of G-PPPS should be available to Guardian Industries Corp. (“Guardian”) and all “similarly situated customers.” (SoCalGas, p. 8.) SoCalGas makes Section 890(e) of the Public Utilities Code a centerpiece of its comments, arguing that:

The fact that § 890(e) instructs the Commission to adopt surcharge rates for “each customer class,” and therefore plainly contemplates that class-specific rates will exist, contradicts the notion that § 890 requires that all customers pay an identical G-PPPS rate[.]. (Id. p. 5.)

SoCalGas’s comments support the creation of a new customer class for end-use customers that would otherwise close up shop in California and consequently provide no contribution to public purpose programs or any fixed costs:

It is clear that the discretion under § 890 to set the amount of the surcharge applicable to individual customer classes rests squarely with the Commission. . . . Approval of a competitive G-PPPS rate for customers such as Guardian that would otherwise relocate out-of-state and make no contribution to these costs is entirely in keeping with § 890’s objective of distributing the cost of social programs and maximizing the contribution toward these costs. (Id., pp. 5-6.)

The parties’ respective comments, although filed by disparate constituencies representing divergent interests, share a common refrain: the Commission has authority to establish G-PPPS

⁴ The Coalition points out that Public Utilities Code Sections 890 *et seq.* mandates a surcharge on *all* natural gas consumed in California, except for certain statutory exemptions, such as electric generators, municipalities and customers with “grandfathered contractual arrangements.” (Coalition, p. 7, n.8.)

rates by customer class. Thus, they support PG&E's suggestion in its Gas Comments that the Commission can establish a new customer class for G-PPPS purposes and set a rate for that customer class designed to encourage significant contributors to the California economy to continue to do business in the State.

II. ISSUES CONCERNING THE ELECTRIC EDRS

This Section II is divided into two parts. Part A addresses the general issues raised by parties in their opening comments that do not strictly conform to the five issues set forth in the EDR ALJ Ruling. Part B addresses the five issues (and their subparts) that were specifically raised for comment in the EDR ALJ Ruling.

A. General Issues

1. Edison and PG&E Should be Given the Option of Withdrawing their Applications Depending on the Outcome of this Proceeding

As Edison correctly observes in its opening comments, both Edison and PG&E voluntarily filed the applications approved in D.05-09-018. (Edison, pp. 2-3.) Edison thus requests that, "if the Commission decides in the context of this application for rehearing to change the ratemaking adopted in D.05-09-018, [Edison] and PG&E should be given the option of withdrawing the tariffs and contracts filed pursuant to that decision." (Id.) PG&E agrees.

Edison's request is consistent with the record of this proceeding, during which the utilities repeatedly clarified that the utilities were seeking to retain their discretion regarding whether or not to make the rate offering at all, depending on the ultimate outcome of the case. (See Reporter's Transcript, pp. 400:13 – 401:14 (October 21, 2004).) PG&E supports Edison's comments in this area.

2. There Should be No Retroactive Application of Any Changes in Contracts or in Overall Ratemaking

Edison states in its opening comments that any changes to the policies and ratemaking the Commission approved in D.05-09-018 should be prospective only. (Edison, pp. 2-6.) PG&E

agrees.⁵ Regardless of whether or not the Commission grants the utilities' application for rehearing on this point, the policy and practical reasons underlying the utilities' application for rehearing, which were summarized by Edison in its opening comments, should guide the Commission's action in follow-up to the EDR ALJ Ruling.

PG&E and its customers have acted in good faith reliance on the policies adopted in D.05-09-018. Since D.05-09-018, some customers have executed Schedule ED contracts and located their operations in California in reliance on these contracts. The Commission's continued evaluation of how to structure the current EDRs "creates uncertainty for some existing or potential ED customers who will not know how or when the Commission might adjust the floor price provision. This will have a detrimental impact on customers evaluating whether they should execute an ED agreement." (Joint Application for Rehearing, p. 8.) These adverse impacts can be minimized by ensuring that any changes are made only on a prospective basis.

Similarly, customers who have relied upon the Schedule ED incentive in locating their operations in California must be relieved of the liquidated damages penalty provision of the Schedule ED agreement for early termination of the agreement if an action by the Commission alters the economic benefit of the incentive. Reducing that incentive could alter the economics of a customer's operation to the point of forcing it to relocate out of state in order to remain in business. Customers who relied on the Schedule ED incentive to locate in California should not be penalized if an action by the Commission unilaterally reduces or eliminates that incentive.

B. THE ISSUES RAISED IN THE EDR ALJ RULING

The issues raised in the EDR ALJ Ruling are set forth below, followed by PG&E's reply comments to each.

Issue 1: Is it necessary to exclude some or all nonbypassable charges from the floor price in order to provide the level of EDR discount adopted in D.05-09-018? Answers should provide supporting facts and explanation.

⁵ Edison and PG&E sought such confirmation from the Commission in the joint application for rehearing the utilities filed on June 26, 2006, concerning D.06-05-042 (Joint Application for Rehearing).

PG&E Response: The Coalition, without citing support of its position, states that the incentives authorized by D.05-09-018 can be attained without excluding nonbypassable charges from the floor price. (Coalition, p. 27.) The Coalition is incorrect. PG&E's showing in its EDR Comments of the need to exclude nonbypassable charges from the floor price to provide the adopted levels of EDR discounts⁶ for certain direct access customers is consistent with the evidence provided by PG&E throughout the underlying proceeding.

As early as its June 14, 2004, direct testimony in A.04-06-018, PG&E noted that the potential existed wherein some types of customers would not be able to receive the desired level of incentives even with a floor price that only included marginal costs. (Exhibit 7, p. 5-1, line 22 to p. 5-2, line 4.) In that testimony, PG&E explained how the incentive would be adjusted downward to ensure positive contribution to margin. Of course, if additional components were included in the floor price, thereby raising it, the likelihood of some customers not receiving the desired incentives would be increased.

As the proceeding progressed, the likely impacts on direct access customers became more evident. In PG&E's October 5, 2004, rebuttal testimony in A.04-06-018, PG&E explained:

[I]t is theoretically possible that the incentive to be received by a DA customer could be limited by the floor price whereas the incentive for a similarly-situated bundled service customer might not be.

While PG&E acknowledges the possibility of this situation arising (particularly in the first years of an ED contract), it is the necessary consequence of the imposition of the marginal cost floor price, which is critical to ensuring that other ratepayers benefit from all customers – whether bundled or DA – participating in the Schedule ED rate.”

(Exhibit 9, p. 2-3, lines 22-30.)

This point was expanded upon during hearings by PG&E's Elvira Howe, who noted that incentives for direct access customers could already be limited by the marginal cost floor and that situation could be exacerbated by inclusion of the nonbypassable charges within the floor price. (Reporter's Transcript, pp. 220-221 (October 16, 2004, PG&E/Howe).)

Thus, it should be clear not only from PG&E's EDR Comments, but also the record of

⁶ Please see footnote 3 regarding the potential for confusion resulting from the different uses and meanings of the term “discount.”

the underlying proceedings, that the desired incentive levels authorized by D.05-09-018 may not, in some cases, be possible to provide to EDR customers without excluding the nonbypassable charges from the floor price.

Issue 2: Can the Commission “discount” any nonbypassable charges? Which ones?

PG&E Response: After review of parties’ opening comments, PG&E stands by its belief that the Commission has the authority to “discount” nonbypassable charges in the manner done by D.05-09-018.⁷ Although the Coalition has argued in its opening comments that the Commission is not authorized to discount nonbypassable charges as done in D.05-09-018, the Coalition’s arguments are fundamentally flawed. In addition to various other legal failings (which are discussed below in response to this Issue), the Coalition’s arguments fail to account for the fact that the EDRs actually maximize nonbypassable charge revenue.

In other words, the EDRs do not reduce overall nonbypassable charge revenues, as the Coalition’s arguments presume. This is because the terms and conditions of the EDRs are specifically designed to prevent free-ridership. Indeed, the Commission specifically found:

The utilities[] have proposed measures, including a mandatory affidavit, the imposition of liquidated damages for fraud, misrepresentation and early termination, and a third-party review by [California Business Investment Services] and [the Business, Transportation and Housing Agency], that will effectively curb the frequency of free-riders. (D.05-09-018, p. 28 (Finding of Fact 6).)

Hence, the nonbypassable charges that are paid by EDR customers would not have been recovered were the EDR not available. Stated another way, if the EDR were not available, the EDR customers would not have located within PG&E’s service area (or would have left the State) and these customers would not be making any contributions to the nonbypassable charges

⁷ In PG&E’s EDR Comments, PG&E acknowledged that its research into the financing orders and agreements underlying the creation of the Energy Recovery Bonds (Recovery Bonds) was continuing. PG&E’s research has confirmed that the Commission is authorized to discount the Energy Cost Recovery Amount (ECRA) in the manner done by D.05-09-018, provided the Commission issues certain findings of fact and a conclusion of law documenting that the prior decision conforms with the legal arrangements establishing the Recovery Bonds, as discussed below in subsection (b)(5) of PG&E’s response to this Issue 2.

in question. The Coalition's failure to recognize this fundamental principle renders its legal analysis fundamentally flawed in so far as that analysis presupposes harm to other customers from reduced collections of nonbypassable charges.

a. PG&E's Responses to the Coalition's General Legal Arguments

The Coalition reaches certain legal conclusions that it relies on to support its arguments that many of the nonbypassable charges at issue here should not be discounted. Those arguments with broad applicability are discussed below in this Section (a). The Coalition's arguments with respect to specific nonbypassable charges are discussed in section (b) below.

1) The term "nonbypassable" does not mean "no exceptions" or "nondiscountable" as the Coalition argues.

The Coalition argues that the term "nonbypassable," as used in various sections of the Public Utilities Code pertaining to electric charges, means "no exceptions" or "nondiscountable." (Coalition, pp. 14-17.) PG&E disagrees. Neither the case law, nor Commission practice, supports the Coalition's argument. Rather, the case law and Commission decisions reveal that the term "nonbypassable" is used consistently to define those charges that are to be paid regardless of a customer's choice of generation or distribution provider.

The only case law cited by the Coalition – *Southern California Edison Co. v. Peevey*, 31 Cal 4th 781 (2003) – does nothing to support the Coalition's argument. (Coalition, pp. 14 and 30.) The case concerned the Commission's regulation of electric rates following the passage of Assembly Bill 1890 and the creation of the direct access market, and analyzed the language of the statute creating the competitive transition costs (CTCs). In the full passage relied upon by the Coalition, the court commented:

The component of rates dedicated to recovery of transition costs was nonbypassable, i.e., it had to be paid to the utility whether the consumer bought power from the utility, from a generator in a single direct transaction, or from a generator in an aggregated direct transaction with other consumers. (§ § 365, *subd. (b)*, 366, 370.) (31 Cal. 4th at 788 (*italics in original*).)

This passage provides the entire discussion in the case on the meaning of "nonbypassable." It shows that the term "nonbypassable" was meant to convey that a customer would need to pay

these charges regardless of the customer's choice of generator in the restructured direct access marketplace. Simply stated, there is nothing in this case that would support the Coalition's conclusion that the term "nonbypassable" means "no exceptions" or "nondiscountable."

Similarly, the Coalition misreads Commission D.99-10-058 (3 CPUC 3d 72) concerning the request of the San Francisco Bay Area Rapid Transit (BART) for an exemption from the electric PPP charge. While the Coalition cites this decision for the principle that "nonbypassable" means "no exceptions," the language of the decision explains that "nonbypassable charges" are those that are meant to be imposed on customers "regardless of whether they take service in a bundled or unbundled manner." (3 CPUC 3d at 81.) Hence, like other Commission decisions cited by the Coalition for the principle that "nonbypassable" means "non-discountable,"⁸ the BART case references the restructured direct access marketplace created by AB 1890 as the genesis of the term nonbypassable. (Coalition, pp. 16-17.)⁹

Furthermore, the Coalition's argument that the term "nonbypassable" means "no exceptions" ignores a whole body of Commission decisions. In these decisions, the Commission has created a multitude of exceptions – previously unrecognized by the Legislature – for nonbypassable charges. For example, despite the absence of any statutory language exempting specific customer generation technologies from specific departing load charges,¹⁰ in D.03-04-030 the Commission granted exemptions from both the DWR bond charge and the DWR power charge to customer generation departing load with generators that were under 1 MW in size and eligible for either an investor-owned utility's Self-Generation Incentive Program or the

⁸ See Decision 03-07-030, cited by the Coalition on pages 14-15, which confirms that the "nonbypassable charges" pertain to "DA customers." (D.03-07-030, *mimeo*, p. 5 (fn. 4).)

⁹ As the Coalition notes, the "nonbypassable" concept has since been extended to include distributed generation as well. (Coalition, p. 15, citing D.03-02-068, *mimeo*, p. 45.)

¹⁰ Decision 03-04-030 went far beyond the limited statutory exemptions that applied to cogeneration DG technologies (Public Utilities Code Section 372) and to biogas digester DG technologies (Public Utilities Code Section 2827.9). For example, the exemptions granted in D.03-04-030 applied to other DG technologies besides cogeneration and biogas digesters. In addition, while the Section 372 statutory exemption covered only the CTC, D.03-04-030 expanded that by granting exemptions also to the DWR power charge for cogeneration units that met the eligibility conditions for the Self-Generation Incentive Program.

California Energy Commission’s similar buy-down rebate program. That decision also granted exemptions from the DWR power charge to customers with “ultra-clean” generators 1 MW or above in size or with generators that met the best available (emissions) control technology. Similarly, D.04-11-014 and D.04-12-059 granted exemptions from the DWR power charge to many municipal departing load customers, despite the absence of any specific statutory authority. These nonbypassable charge exemptions -- granted by the Commission of its own volition to a variety of departing load customers -- effectively amount to 100 percent discounts on specific charges.¹¹

Accordingly, the Coalition’s arguments that the legislature’s use of the term “nonbypassable” was meant to convey either “no exceptions” or “nondiscountable” are unsupportable in both case law and Commission practice.

2) The Long History – and Precise Applicability to the Matter at Hand -- of Section 740.4 Warrants Deference, not Dismissal.

The Coalition dismisses the importance of Section 740.4 of the Public Utilities Code as a “general” provision that has been superseded by more specific ones. (Coalition, p. 11.) The Coalition is wrong to dismiss the importance of Section 740.4.

Section 740.4 is precisely applicable to the Commission’s actions in D.05-09-018. It is the controlling statutory provision that authorizes the Commission’s actions in approving economic development programs and rates, and speaks specifically to the conditions under which rate discounts are to be allowed. The fact that this provision predates the other statutory provisions at issue here, which the Coalition itself acknowledges (Coalition, p. 12), shapes how

¹¹ Not only has the Commission granted exemptions to nonbypassable charges where the legislature has not done so, but PG&E believes that the Commission has even granted an exemption where the legislature instructed to the contrary. Section 2827(k) of the Public Utilities Code states:

Net metering and co-metering customers shall not be exempt from the public benefits charge. In its report to the Legislature, the commission shall examine different methods to ensure that the public benefits charge remains a nonbypassable charge.

Nevertheless, in Resolution E-3847, the Commission found that the term “nonbypassable” in this context did not require net metered customers to pay the charges on their departed load. (Resolution, E-3847, pp. 5-6.)

those later provisions are to be read, not the reverse as the Coalition would argue.

It is an established principle of law that “it is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless that intention is made clearly to appear either by express declaration or by necessary implication.” (*Regency Outdoor Advertising v. City of Los Angeles*, 2006 Cal. LEXIS 9499, *35 (2006); *Torres v. Automobile Club of Southern California*, 15 Cal. 4th 771, 779 (1997).) Given the long-established policy of the State of California to allow rate discounts for customers on economic development rates, the subsequent statutory provisions creating new charges would thus need to expressly declare that the discounting of such charges should not be allowed for EDR customers or it must be the statutes’ necessary implications. None of the statutes makes such an express declaration, nor is it the necessary implication that such statutes must be read in such a way.

3) Failure of the Authorizing Statutory Provisions to Identify any Exceptions does not Foreclose the Commission’s Actions in Excluding the Nonbypassable Charges from the EDR Floor Price.

The Coalition states that no discounting of the nonbypassable charges should be allowed if no exemptions are set forth in the authorizing statutes. (Coalition, p. 14.) The Coalition’s argument must fail because it ignores three things.

First, the Commission has a well-established practice of allowing exceptions where the legislature has not. As explained above, the Commission has granted many types of exceptions to departing load customers, notwithstanding the lack of express statutory authorization to do so. (See footnotes 10-11 and accompanying text.)

Second, the “discounting” adopted by D.05-09-018 is very different in kind from the exceptions typically seen in authorizing statutes. The typical legislative exception exempts customers in perpetuity from a charge that would otherwise be paid by that customer. (See, e.g., Pub. Util. Code Sec. 372(a)(1)-(4).) In contrast, D.05-09-018 merely excludes the nonbypassable charges from the floor price to be paid by EDR customers that would not otherwise have been in California at all were it not for the EDR offering. While it is true that this manner of calculation of the floor price allows some types of customers to contribute less

toward nonbypassable charges as other types of customers, this situation is temporary and – at most – would only last five years during the span of the EDR contract.¹²

Third, and most importantly, the legislature has indeed specifically authorized the discounting approved in D.05-09-018. As mentioned above, the legislature has expressly authorized the discounting of rates in Section 740.4 of the Public Utilities Code. In this section, there are no restrictions on the types of charges that may be discounted, nor how deep those charges can be discounted. The only restriction on the Commission set forth there is that the Commission must allow ratepayer recovery of the cost of the programs and discounts as long as “the ratepayers of the public utility will derive a benefit from those programs.” (Pub. Util. Code Sec. 740.4(h).) Here, that threshold is met, as confirmed by Findings of Fact 1, 2 and 3 of D.05-09-018. These findings – which remain undisturbed by D.06-05-042 -- acknowledge the importance of the EDRs to ratepayers and the importance of bringing (and keeping) businesses in California by designing EDRs with a floor price this is as low as possible.

b. PG&E’s Response to the Specific Issues Raised by Intervenors Concerning the Various Nonbypassable Charges

Because the Coalition argues most strongly against the discounting of the PPP charges, this type of nonbypassable charge is discussed first, followed by the other nonbypassable charges, in the numeric order they appear in the Public Utilities Code.

1) Section 381 – Electric Public Purpose Program (PPP) Charges

For reasons different than those articulated by the Coalition, PG&E agrees that the Commission does not have the authority to discount the G-PPPS. (See Section I of these reply comments.) However, as mentioned above, PG&E does not agree with the Coalition that the electric PPP charges cannot be discounted.

The two sets of PPP charges are distinguishable because of the distinct differences in their statutory origins and their statutory provisions. Whereas the G-PPPS is a tax, the electric

¹² Moreover, due to the annually declining discount, the amount of nonbypassable charge revenue obtained from a given EDR customer would increase each year.

PPP charges are not.

Section 381 of the Public Utilities Code concerns electric PPP charges.¹³ It states:

To ensure that the funding for the programs described in subdivision (b) and Section 382 are not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. *The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.* The rate component shall fall within the rate levels identified in subdivision (a) of Section 368. (PU Code Sec. 381(a) (emphasis added).)

Furthermore, AB 1890 enacted Public Utilities Code section 381. Unlike AB 1002 that established the G-PPPS, AB 1890 was not a tax equity measure. Electric PPP funds are not remitted to the BOE, nor deposited in the State Treasury. Furthermore, whereas customers who are exempt from taxation under the United States Constitution or the California Constitution also are statutorily exempt from paying G-PPPS, no statutory exemption applies to electric PPP charges. Thus, like many of the other types of charges established by AB 1890 (e.g., CTCs), the Commission retains its authority to allocate, and discount, the PPP charges, as appropriate.

Consistent with PG&E's own understanding of the history of the electric PPP charges, the Coalition makes no attempt to argue that these charges are a tax. Rather, the Coalition argues that the electric PPP charges cannot be discounted for the same general reasons that it raises with respect to the G-PPPS. For example, the Coalition relies on the Legislature's use of the term "nonbypassable" and wrongly assigns to that term the definition "nondiscountable" with "no exceptions." As discussed at length above, this argument has no merit.

2) Section 366.2(d) – Department of Water Resources (DWR) Charges

Section 366.2(d)(1) of the Public Utilities Code is cited by parties for the principle that DWR charges are "nonbypassable." (See Coalition, pp. 28-30.) This provision states:

It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair

¹³ When one compares Section 381 on the one hand with Sections 890 *et seq.* (concerning G-PPPS) on the other, these provisions bear little resemblance to one another.

share of the Department of Water Resources' electricity purchase costs, as well as electricity purchase contract obligations incurred as of the effective date of the act adding this section, that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers.

The Coalition argues that the reference to each end-use customer bearing a “fair share” and the prohibition against cost-shifting prevent the Commission from discounting the DWR charges in the manner done by D.05-09-018. (Coalition pp. 28-30.) PG&E disagrees.

Nothing in Section 366.2(d)(1) prevents the Commission from establishing separate classes of customers that would pay different levels of charges for the DWR's electricity purchase costs. Indeed, the very face of this provision expects the Commission to develop different Commission-approved rates. Accordingly, it cannot be reasonably argued that the “fair share” provision eliminates the Commission's inherent authority to determine that EDR customers that would not otherwise be in the State of California should be entitled to pay a lower amount of DWR charges as a means of attracting or retaining such customers in the State of California.

The Coalition's argument that the prohibition against cost-shifting also forecloses the discounting methodology adopted in D.05-09-018 also is without merit. As explained below in response to Issue 4a, in the matter at hand there is no cost-shifting and the concern expressed by the Legislature has no relevance here.

3) Section 367 et seq. – Competitive Transition Charges (CTCs)

Section 367 of the Public Utilities Code, enacted as part of AB 1890, concerns competitive transition charges (CTCs). It states:

The commission shall identify and determine those costs and categories of costs for generation-related assets and obligations, consisting of generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, including, but not limited to, restructurings, renegotiations or terminations thereof approved by the commission, that were being collected in commission-approved rates on December 20, 1995, and that may become uneconomic as a result of a competitive generation market, in that these costs may not be recoverable in market prices in a competitive market, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that these additions are necessary to

maintain the facilities through December 31, 2001. *These uneconomic costs shall include transition costs as defined in subdivision (f) of Section 840, and shall be recovered from all customers or in the case of fixed transition amounts, from the customers specified in subdivision (a) of Section 841, on a nonbypassable basis and shall [comply with the following subsections of Section 367].* (PU Code Sec. 367 (emphasis added).)

Relying on *Southern California Edison*, the Coalition argues that the Legislature's use of the term "nonbypassable" forecloses the Commissions authority to discount CTCs as was done in D.05-09-018. (Coalition, p. 30.) For the reasons discussed above in subsection (a)(1) of PG&E's response to this Issue 2, this argument has no merit.

The Coalition also argues that the prohibition against cost-shifting set forth in Section 368(b) of the Public Utilities Code precludes the discounting adopted by D.05-09-018. (Coalition, p. 31.) For the reasons discussed below in response to Issues 4 and 4a, this argument must fail. Simply put, there is no cost-shifting in the matter at hand.

4) Section 379 – Nuclear Decommissioning (ND) Charges

Section 379 of the Public Utilities Code concerns nuclear decommissioning (ND) charges. It states:

Nuclear decommissioning costs shall not be part of the costs described in Sections 367, 368, 375, and 376, but shall be recovered as a nonbypassable charge until such time as the costs are fully recovered. Recovery of decommissioning costs may be accelerated to the extent possible.

Like the Coalition's arguments with respect to CTCs (discussed above), the Coalition's discussion of the ND charge provision relies on its argument that the term "nonbypassable" must mean "nondiscountable and not subject to any exemptions." (Coalition, p. 32.) As already discussed in these reply comments, this argument is fundamentally flawed.

As acknowledged by the Coalition, section 379 was enacted as part of AB 1890, which created the restructured marketplace and allowed customers to choose alternative suppliers of electricity. (Coalition, p. 32.) Hence, as explained above, the better reading of the term "nonbypassable" -- as confirmed by the California Supreme Court -- is that it means that customers cannot avoid the charge by choosing an alternative supplier of electricity. *Southern California Edison*, 31 Cal 4th at 788.

5) Section 848 et seq. – Energy Cost Recovery Amount (ECRA)

The Recovery Bonds developed in 2005 for the benefit of PG&E’s emergence from Chapter 11 were issued under Public Utilities Code Sections 848 et seq. and D.04-11-015. Repayment of these Recovery Bonds is secured by a lien on Recovery Property. (Recovery Property includes the right to impose a nonbypassable charge known as Fixed Recovery Amounts on substantially all consumers of electricity in PG&E’s service area. Fixed Recovery Amounts are a component of the ECRA charges.)

Section 848.1(g) of the Public Utilities Code includes a general pledge from the State of California that Fixed Recovery Amounts will continue to be imposed as provided in D.04-11-015 until all the Recovery Bonds are repaid:

Except as otherwise provided in this subdivision, the State of California does hereby pledge and agree with [PG&E], owners of recovery property and holders of recovery bonds that the state shall neither limit nor alter the fixed recovery amounts, any associated fixed recovery tax amounts, recovery property, financing orders, or any rights thereunder until the recovery bonds, together with the interest thereon, are fully paid and discharged, and any associated fixed recovery tax amounts have been satisfied or, in the alternative, have been refinanced through an additional issue of recovery bonds. . . .

In the text immediately following the above-quotation, however, section 848.1(g) provides an exception to the general pledge for those situations where “adequate provision” has been made by law to protect the interests of PG&E, the owners of the Recovery Property and the holders of the Recovery Bonds. It states:

provided nothing contained in this section shall preclude the limitation or alteration if and when adequate provision shall be made by law for the protection of [PG&E], owners [of Recovery Property], and holders [of Recovery Bonds]. (Section 848.1(g).)

As shown in PG&E’s response to Issue 1 in its EDR Comments, the structure of the EDR approved by D.05-09-018 may result in some types of new PG&E retail electric customers (or existing customers that would have otherwise left the State) paying reduced Fixed Recovery Amounts and other ECRA charges per kWh, during some periods of service under their EDR

contracts.

The fact that some customers may be contributing less Fixed Recovery Amounts than others implicates the general State pledge in Section 848.1(g). However, because of the design of the EDRs approved by D.05-09-018, the Commission may determine that allowing EDR customers to pay less Fixed Recovery Amounts than other customers falls within the above-quoted exception to the general State pledge because the EDRs will be “creating” additional Fixed Recovery Amount revenues where there would otherwise be none.

In other words, the Commission may determine that the EDR will not reduce the value of Recovery Property that secures the Recovery Bonds and will not adversely affect PG&E, the value of Recovery Property, or holders of the Recovery Bonds. To that end, Commission could adopt the following findings of fact and a conclusion of law to document that the EDRs adopted by D.05-09-018 conform to the above-quoted exception to the general State pledge:

- Finding of Fact. Implementation of the EDR will not delay full and timely recovery of Fixed Recovery Amounts or other ECRA charges from customers. Because of the protections in the EDR against “free-ridership,” the customers that qualify for the EDR will pay no less Fixed Recovery Amounts or other ECRA charges or, for that matter, other nonbypassable charges than those customers would have paid if the Commission did not implement the EDR.
- Finding of Fact. Implementation of the EDR will not reduce or impair the value of Recovery Property that secures Recovery Bonds issued pursuant to D.04-11-015.
- Conclusion of Law. For purposes of PU Code Section 848.1(g), implementation of the EDR will constitute adequate provision by law for the protection of PG&E, owners of Recovery Property and holders of Recovery Bonds.

Issue 3: For each individual nonbypassable charge, address whether exemptions or exceptions for EDR customers are permissible under the applicable statutes and Commission decisions.

PG&E Response: As explained in PG&E’s response to Issue 2, PG&E believes the Commission has the authority to discount the nonbypassable charges in the manner that was done in D.05-09-018 and that no “exemptions” or “exceptions” were required, except as described above for the ECRA charge. As discussed above, PG&E believes the Commission

could issue the above findings of fact and conclusion of law in order to conform the Commission's action in D.05-09-018 to the State's general pledge in Section 848.1(g) of the Public Utilities Code.

Issues 4 and 4a: What nonbypassable charges are subject to exception upon a Commission finding that there will be no cost shifting? Parties advocating exception from the payment of such nonbypassable charges must submit a showing to demonstrate why cost shifting would not occur (e.g., does customer retention in fact produce benefits that would offset any shifting of costs to other customer classes?).

PG&E Response: No party specifically called out which statutory provisions concerning nonbypassable charges speak directly to the issue of cost-shifting (see, e.g., Coalition, p. 34). One legislative provision of which PG&E is aware that speaks to cost-shifting is Public Utilities Code Section 366.2(d)(1), concerning DWR charges. In pertinent part, it states, "It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers."

Another provision is Public Utilities Code Section 368(b), which concerns CTCs. This section concerns the cost recovery plans that were to be prepared by the utilities to recover CTCs. It states:

The cost recovery plan shall provide for identification and separation of individual rate components such as charges for energy, transmission, distribution, public benefit programs, and recovery of uneconomic costs. The separation of rate components required by this subdivision shall be used to ensure that customers of the electrical corporation who become eligible to purchase electricity from suppliers other than the electrical corporation pay the same unbundled component charges, other than energy, that a bundled service customer pays. *No cost shifting among customer classes, rate schedules, contract or tariff options shall result from the separation required by the subdivision. . . .* (PU Code Sec. 368(b) (emphasis added).)¹⁴

In the matter at hand, though, and contrary to the suggestion of other parties, there is no such cost-shifting for these, or any other, nonbypassable charges. The design of the EDR

¹⁴ See also Public Utilities Code Section 367(e)(1).

adopted by D.05-09-018 ensures that each participating customer on the EDR contributes revenues higher than the marginal cost of providing service to that customer. In other words, the EDR does not shift costs, but, instead, results in incremental contributions which help other customers. This is the foundation upon which the Commission approved the EDR in D.05-09-018. (*Mimeo*, p. 27, (Findings of Fact 1-3).) This foundation was not disturbed by D.06-05-042.

Accordingly, there is no need for an “exception” to these legislative provisions because there is no underlying cost-shifting. Rather, the opposite will occur: the additional contribution to margin from ED customers will benefit other customers by reducing their overall cost responsibility for fixed costs (and thus their rates).

Issue 4b: Do any of the benefits of retaining EDR customers accrue to shareholders? If so, how should this be considered when determining cost-shifting?

PG&E Response: In its opening comments, Edison correctly confirms that the benefits of retaining EDR customers do not accrue to shareholders. (Edison, pp. 19-20.) In contrast, the Coalition and the Irrigation Districts urge that the Commission should find that benefits do accrue to shareholders from the EDRs. (Coalition, pp. 34-35; Irrigation Districts, p. 5.) Edison is right, and the Coalition and the Irrigation Districts are wrong.

Tellingly, the arguments put forward here by the Coalition and the Irrigation Districts merely parrot those previously presented by these parties to the Commission, which the Commission has considered and rejected in D.05-09-018.¹⁵ Indeed, it is patently false for the Irrigation Districts to claim “The undisputed evidence before the Commission proved that benefits of retaining EDR customers accrued to utility shareholders.” (Irrigation Districts, p. 5.) As PG&E has previously shown, the record in this proceeding is extensive and establishes to the contrary that no party has been able to identify, let alone quantify, any tangible benefit to

¹⁵ Compare the comments of the Irrigation Districts on page 5 with the language in the December 1, 2004 opening brief of Merced Irrigation District on page 10. Much of the language is copied word for word. Similarly, compare the comments of the Coalition on pages 34 and 35 with the arguments made by Aglet on pages 16-17 of its December 1, 2004 opening brief.

shareholders from EDR participation.¹⁶

If what the Irrigation Districts say is true, then one would have expected the Irrigation Districts – or perhaps another party – to have challenged the findings in D.05-09-018 that ratepayers benefit from the EDRs and the conclusion that there should be no shareholder funding of the EDRs. No party made such a challenge. They did not because the evidence would not have supported such a challenge.

Even worse than re-hashing arguments previously put forward and rejected by the Commission, the Coalition also has failed to reflect the record fairly. For example, while the Coalition leads its discussion by citing Commission Resolution E-3654 – which previously adopted a 25% shareholder penalty associated with customer participation on the EDRs – the Coalition fails to acknowledge the admission made by one of its members that this Resolution is no longer applicable. Referring to Resolution E-3654, DRA (then the Office of Ratepayer Advocates) stated, “The utilities may even be correct that prior Commission decisions regarding ED rates allocated the costs to shareholders based on a rationale that is no longer applicable.” (ORA’s December 1, 2006 Opening Brief, p. 9.)

The other authorities cited by the Coalition are similarly inapplicable. The Coalition cites Commission Resolution E-3707 and D.96-08-025 for the principle that “should EDR discounts apply to nonbypassable charges, shareholders must pay the undercollection.” (Coalition, p. 35.) There are two problems with the Coalition’s argument. First and most simply, in the matter at hand, there is no undercollection. Due to the design of the EDRs and the protections against

¹⁶ The only new allegation included in the parties’ comments is the Irrigation Districts’ claim that because PG&E provides shareholder-funded grants to certain economic development organizations shareholders must benefit from such grants, which, in turn, helps to justify shareholder funding of the EDRs. (Irrigation Districts, p. 5.) The Irrigation Districts’ argument fails on two accounts. First, it is completely inappropriate to allege direct shareholder benefit from charitable giving. PG&E’s grants come with “no strings attached.” Such is the nature of PG&E’s charitable giving. Second, it is a *non sequitur* to suggest that grants to economic development organizations have any relation to the ratemaking of EDRs. Under current ratemaking, shareholders benefit not at all from customer participation in the EDRs. (See PG&E’s December 15, 2004 Reply Brief, pp. 23-24.)

free-ridership, there will be incremental positive revenue, not an “undercollection.”

Second, the situations addressed by these authorities are distinguishable from, and inapplicable to, the matter at hand. The Resolution (and D.96-08-025 on which it relies) spoke to an anomalous situation brought on by the rate freeze instituted by AB 1890, in which the cost of providing service to customers began to exceed the otherwise applicable tariff (OAT) rate due to increasing energy prices. (Resolution E-3707, p. 4.) Because EDR customers were not covered by the rate freeze, their rates began to rise above those of non-EDR customers that were protected by the rate freeze. To correct for this anomaly, Edison decided to cap the EDR rates at the OAT rate and subsequently advice filed with the Commission to confirm this practice. (Resolution E-3707, p. 2.)

In Resolution E-3707, the Commission rejected Edison’s request, finding that the cap proposed by Edison would have unreasonably shifted costs incurred by EDR customers to other Edison customers. (Resolution E-3707, p. 7 (Finding 13).) Accordingly, the Commission directed Edison to collect from the previously-under-billed EDR customers the filed rate and not the capped rate actually charged by Edison. (Resolution E-3707, p. 7 (Finding 14).) Yet, acknowledging concern for the situation of these EDR customers, the Commission gave Edison the option of using shareholder funds to fund the under-collection of EDR customers’ rates. (Resolution E-3707, pp. 5, 7 (Finding 15).) Thus, the Resolution neither required Edison’s shareholders to fund the under-collection, nor did the Resolution support any conclusion that shareholders benefit from such rates. The Coalition’s arguments to the contrary are without merit.

For the reasons previously stated in PG&E’s opening comments, PG&E does not wish to re-hash here, as the Irrigation Districts and the Coalition have done, PG&E’s arguments concerning shareholder benefits. PG&E relies on these reply comments and the citations provided in PG&E’s opening comments to provide evidence of the full record. The Commission has reviewed the prior record and reached an appropriate conclusion – indeed, the only justifiable one – that the ratepayers are the true and only beneficiaries of the EDRs and these

rates. This finding should be sustained.

Issue 5: Can EDR program levels under D.05-09-018 be achieved by applying the discount to bill components other than nonbypassable charges? Are there any statutory restrictions to applying the EDR discount to the other bill components?

PG&E Response: As with Issue 1, the Irrigation Districts, SoCalGas and the CMTA did not substantively comment on Issue 5. The Coalition, consistent with its response to Issue 1, posits without evidentiary support that incentives “...approved in D.05-09-018 can be achieved by applying the discounts to the distribution and generation rate component.” (Coalition, p. 35.) As discussed above in response to Issue 1, the Coalition’s claim is incorrect.

Issue 5a: What would be the resulting allocation of program costs?

PG&E Response: PG&E is concerned that parties, including the Coalition, continue to misconstrue the difference between the incentive rate and the otherwise applicable tariff as a “cost.” PG&E has consistently demonstrated during this proceeding that the EDR does not generate “costs” for other customers.¹⁷ Indeed, the Commission rightly found that other customers benefit from the implementation of EDRs. The Commission explicitly found:

The implementation of successful economic development projects would benefit ratepayers directly by increasing the revenues available to contribute to the utilities’ fixed costs of doing business, thus lowering rates to other customers. (D.05-09-018, page 27, Finding of Fact 2.)

As previously stated, this finding remains undisturbed by D.06-05-042 and is not part of the limited grant of rehearing of that decision.

Issue 5b: Would applying the discount to the other bill components (e.g., distribution and transmission) result in zero or negative margin to those charges? If so, by how much (expressed as a percentage)? How should this shortfall be allocated among the remaining customer classes?

¹⁷ As a point of clarification, on page 6 of PG&E’s opening comments, PG&E made the statement, “Furthermore, because the floor price under the EDR exceeds the utility’s marginal cost to serve that customer, there is no “cost” or “loss” in providing service to that EDR customer.” The word “exceeds” in that sentence should have been “equals.”

PG&E Response: Edison notes in its comments that it first allocates revenues received under the EDRs to the nonbypassable components of the rate, and then Edison applies remaining revenues against the distribution portion of the rate. (Edison, pp. 21-22.) PG&E believes that this approach has merit and is willing to adopt such an approach. By doing so, allocation of revenue toward the nonbypassable charges would be maximized, and other ratepayers would continue to benefit because the overall revenues would exceed marginal costs.

To state this another way, no matter what allocation is made for revenues that exceed the marginal cost of service, other ratepayers benefit. This is because generally it does not matter to other ratepayers whether the EDR customers' revenues go first to pay off "fixed costs" (such as nonbypassable charges) or marginal costs. Ultimately, the EDR customers' revenues are exceeding the marginal costs that are being incurred to serve those customers and the fixed charges that would have been allocated to other customers are reduced. This lessens the burden on other customers, as the Commission correctly found in D.05-09-018. (Page 27, Finding of Fact 2.)

Issue 5c: What benefits accrue to remaining customers that offset any shortfalls?

PG&E Response: As explained in PG&E's opening comments (p. 7) and Edison's opening comments (p. 22), there are no "shortfalls." Even the Coalition seems to acknowledge as much. In response to this Issue, the Coalition states,

If EDR rates fall below marginal costs, the ratepayers would be, essentially, paying a customer to keep buying its energy in California. No ratepayer benefits, as required under Section 740.4(h) would exist in that situation. (Coalition, p. 36 (emphasis added).)

In making these comments, the Coalition has effected a major admission.

By design, the EDR revenues will not fall below Commission-approved marginal costs and, thus, instead of ratepayers paying costs for EDR customers (as the Coalition fears), the reverse is true. EDR customers pay the costs that would otherwise be faced by other ratepayers. And while the Coalition may question whether those marginal costs are correctly set, the EDRs approved by D.05-09-018 use Commission-approved marginal costs. As discussed in the

underlying proceeding, there are no better options available.¹⁸ Therefore, because the incremental revenue from the retention or attraction of an EDR customer provides revenues that would otherwise have been foregone, there are no “shortfalls” and other ratepayers benefit, as the Coalition’s above-quoted comment concedes.

Respectfully submitted,

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Dated: August 22, 2006

¹⁸ As PG&E explained on pages 26-27 of its December 1, 2004 Opening Brief, “PG&E has proposed to adopt a customer-specific marginal cost price floor that is based on the most recent adopted Commission-approved marginal costs and is set at the time the customer enters into the ED rate contract. (Exhibit 7, PG&E Direct Testimony, p. 5-1, fn. 2.) It is not clear to PG&E whether Aglet or AReM [the Alliance for Retail Energy Markets] are proposing that PG&E use something other than Commission-approved marginal costs. If that is Aglet or AReM’s position, it should be rejected based solely on the controversy that could be created if PG&E were to depart from its current floor-setting practices based on marginal cost data already approved by the Commission.”

CERTIFICATE OF SERVICE

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, California 94105.

On the 22nd day of August, 2006 I served a true copy of:

**REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY
IN RESPONSE TO THE JUNE 22, 2006 AND JUNE 26, 2006 ADMINISTRATIVE
LAW JUDGE RULINGS**

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service lists for A.04-04-008, A.04-06-018 and A.05-10-010.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service lists for A.04-04-008, A.04-06-018 and A.05-10-010 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 22nd day of August, 2006 at San Francisco, California.

/s/

PAMELA A. TOM

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Downloaded August 22, 2006, last updated on August 16, 2006

[A0510010] Commissioner Assigned: Geoffrey F. Brown on October 28, 2005; ALJ Assigned: Robert A. Barnett on October 28, 2005

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[A0406018-A0404008] Commissioner Assigned: Michael R. Peevey on December 20, 2005

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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[A0510010] Commissioner Assigned: Geoffrey F. Brown on October 28, 2005; ALJ Assigned: Robert A. Barnett on October 28, 2005

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[A0406018-A0404008] Commissioner Assigned: Michael R. Peevey on December 20, 2005

CPUC DOCKET NO. A0404008-A0406018-A0510010 CPUC REV 08-18-06

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